THE HONOURABLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.23726 of 2006

Date:18-12-2007

Between:

Smt.Dr.T.Santha Devi and another. ..
PETITIONERS

and

Punjab National Bank and another.
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RESPONDENTS

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ORDER:

Heard Sri K.Venkatesh, learned counsel representing the writ petitioners and Sri A.Satyanarayana, learned counsel representing the respondents.

This court while ordering notice before admission on 15-11-2006, stayed the sale proposed to be held on 23-11-2006 subject to the condition of the petitioners depositing 1/4th of the reserve price. It is brought to the notice of the court that the said direction had been complied with.

This writ petition is filed praying for a Writ of Mandamus declaring the action of the respondents in issuing proclamation of sale notice, dated 12-10-2006, which was served on 30-10-2006, to sell immovable property, belonging to the 1st petitioner, i.e., secured asset to an extent of 0.50 cents of land situated at Sy.No.318/1 of Rahmantha Nagar, Rajahmundry, East Godavari District, by way of public auction on 23-11-2006, while exercising the powers under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Instruct Act, 2002 (hereinafter referred to as "the Act" for the purpose of convenience), as illegal, arbitrary and contrary to law and consequently, to set aside the proclamation of sale notice issued by the 2nd respondent, dated 12-10-2006, in the interest of justice and pass such other orders.

Sri K.Venkatesh, learned counsel representing the writ petitioners had taken this court through the contents of the affidavit filed in support of the writ petition and also would maintain that inasmuch as the appeal already had been transferred and re-numbered as S.A.No.68 of 2006 on the file of the Debt Recovery Tribunal, Hyderabad, and the petitioners also received notice that the matter is coming up for hearing on 10-01-2008, let the writ petition be disposed of directing the concerned Debt Recovery Tribunal, Hyderabad, to dispose of the matter at an early date.

On the contrary, Sri A.Satyanarayana, learned counsel representing the respondents had taken this court through the contents of the affidavit filed in support of W.V.M.P.No.2565 of 2006 and also would further maintain that similar application was moved on the file of the Debt Recovery Tribunal, Visakhapatnam and the interim order made had not been complied with and even if the order made by this court had been complied with, the difference of amount would be around Rs.2.5 lakhs. Hence, let the writ petitioners deposit the rest of the amount within a reasonable time and then proceed with the appeal pending on the file of Debt Recovery Tribunal, Hyderabad.

Heard the counsel.

The 1st petitioner had sworn to the affidavit filed in support of the writ petition. It is stated that the 2nd petitioner had availed cash credit loan facility for establishing and running a unit Sri Venkata Satya Sai Metal Suppliers, which is Metal Crushing Unit. It is stated that the total loan amount borrowed from the 1st respondent Bank on 20-01-2001, by executing necessary documents was Rs.15,00,000/-. The 1st petitioner is the guarantor for the said loan transaction. The 1st petitioner mortgaged his immovable property, which is an extent of 0-50 cents of land situated in Sy.No.318/1, Rahmantha Nagar in Rajahmundry Town. The 2nd respondent had paid substantial amount towards principal and interest to the 1st respondent Bank.

It is further stated that the 1st respondent Bank issued a notice, dated 17-09-2002, under Section 13(2) of the Act declaring the account as NPA. Thereafter, the 2nd respondent herein issued a notice, dated 14-10-2004 under Section 13(4) of the Act to take possession of the Secured Asset i.e., the land belonging to the 1st petitioner. It is further stated that a demand of Rs.16,63,834/- was made in the said notice.

It is further stated that aggrieved by the order of the 2nd respondent in issuing a notice under Section 13(4) of the Act, the 1st petitioner along with the 2nd petitioner filed an appeal before the Debt Recovery Tribunal at Visakhapatnam under Section 17 of the Act. The said appeal is numbered as

S.A.No.97/2004. The said appeal is being adjourned from time to time, from 17-02-2005 to 25-11-2005, as there was no Presiding Officer at the Debt Recovery Tribunal, Visakhapatnam.

It is further stated that the 2nd respondent issued notice of Proclamation of Sale, dated 23-10-2006, proposing to sell the property of the 1st petitioner in a public auction to be held on 23-11-2006 at Rajahmundry, for recovery of a sum of Rs.27,23,662/-. It is stated that the said proclamation of sale notice was served on the 1st petitioner on 31-10-2006, through courier enclosing a letter addressed by the 2nd respondent, stating that the Bank had decided to sell the secured asset by public auction. It is stated that immediately thereafter, the petitioners got enquired in the Debt Recovery Tribunal about the appeal filed by them and it was informed that the appeal was transferred to the Debt Recovery Tribunal at Hyderabad, as the Advocate appearing for the Bank became the Presiding Officer of the Debt Recovery Tribunal at Visakhapatnam. As on today, the petitioners have not received any notice from the Debt Recovery Tribunal at Hyderabad. The petitioners' enquiry further revealed that the entire file was transmitted to the Debt Recovery Tribunal at Hyderabad. Hence, the Proclamation of Sale issued by the 2nd respondent is illegal, arbitrary and contrary to law.

It is further stated that the 1st Respondent bank being a party to the appeal and though the appeal is pending before the Debt Recovery Tribunal, has chosen to resort to the extreme step of selling the immovable property belonging to the 1st petitioner. The action of the respondents in conducting public auction to sell the secured asset, in spite of pendency of statutory appeal filed against the order made under Section 13(4) of the Act, is totally illegal, arbitrary and in violation of the principles of natural justice. Accordingly to Rule 9 of the Rules made under the Act, sale of immovable property has to take place after expiry of 30 days from the date of service of notice on the borrower. In the instant case, there is no notice to the borrower, however the 1st petitioner being a guarantor has received a notice, dated 12-10-2006, on 30-10-2006 from the 2nd respondent fixing the public auction on

23-11-2006. According to Rule 8(5) of the Rules made under the Act, the authorized officer has to obtain valuation of the property from an approved valuer and fix the reserve price of the property. In the instant case, though the property is situated in Rajahmundry Town, the upset price was fixed at Rs.22,00,000/- only, though the property is worth nearly Rs.80,00,000/-. It is stated that there is no proper valuation of the property and the 1st Respondent Bank had not obtained any valuation certificate from any approved agency. It is further stated that if the sale is effected, the 1st petitioner will sustain serious and irreparable loss, as the same is being held in contravention of the Rules framed under the Act. If the sale of the property of the 1st petitioner is allowed to take place, the appeal filed before the Debt Recovery Tribunal would become infructuous. In such circumstances, the writ petitioners approached this court praying for appropriate relief.

In the counter affidavit filed by the respondents, it is stated that it is not correct to state that the 2nd petitioner had paid substantial amounts in the loan account. The loan account was irregular from 27-03-2002 and that the account was declared as NPA by 31-08-2002. Thereafter, except making part payment of Rs.25,000/-, the petitioners had failed to regularize the account and that the 1st Respondent Bank was constrained to initiate proceedings against the petitioners.

It is further stated that the petitioners are guilty of suppression of all the material facts. It is stated that the petitioners had filed Securitization Application before the Debt Recovery Tribunal and also moved a stay petition and the Debt Recovery Tribunal was pleased to grant stay of further proceedings on condition of the petitioners depositing a sum of Rs.8 lakhs on or before 17-02-2005. The petitioners had failed to deposit the amount and that at their request, the time was extended upto 11-04-2005. Even after extension of time, the petitioners had not deposited the amount and hence the stay granted by the Debt Recovery Tribunal had elapsed and deemed to have been vacated.

It is further stated that after lapse of the interim order made by the Debt

Recovery Tribunal by 11-04-2005, after more than a year, the 1st respondent Bank had made a proclamation of sale on 12-10-2006. Individual notices were served on the petitioners and publication of the proclamation of sale had been made in Eenadu on 16-10-2006 and also in Hindu on 14-10-2006 and proposed to sell the property through public auction on 23-11-2006. It is further stated that sufficient time was granted to the petitioners and even after lapse of the interim order granted by the Debt Recovery Tribunal, the petitioners failed to make any payment and hence they are not entitled to blame the Debt Recovery Tribunal or the respondents in any manner.

It is further stated that the petitioners failed to comply with the conditional order. Having willfully disobeyed the order of the Debt Recovery Tribunal, the petitioners cannot contend that the proceedings of the Bank shall not be continued and are illegal, arbitrary etc. The loan account had been classified as NPA by 31-08-2002. Several demands were made and in response to the letters from the Bank, the 2nd petitioner submitted several letters requesting the Bank to grant time and assured the Bank through false promises that the amount will be paid. Having failed to fulfill the promises made from time to time, the petitioners cannot invoke the jurisdiction of this court under Article 226 of the Constitution of India. The petitioners are guilty of abuse of process of the court. It is stated that it is false to contend that the respondents had not obtained any Valuation Certificate. The Bank had obtained Valuation Certificates from two competent valuers, M/s.Aakar Associates, Rajahmundry and Vijaya Designs, Visakhapatnam and the reserved price was fixed in accordance with the Valuation Certificates. In such circumstances, it is stated that the writ petition is liable to be dismissed.

As can be seen from the respective stands taken by the parties, it appears that the writ petitioners having failed to comply with the conditional order made by the Debt Recovery Tribunal, having kept quiet for sufficiently a long time, appeared to have approached this court being aggrieved by the impugned action. However, it is brought to the notice of this court that the appeal pending on the file of the Debt Recovery Tribunal, Visakhapatnam, had been transferred to the Debt Recovery Tribunal, Hyderabad, which is

numbered as S.A.No.68 of 2006 and the said appeal is pending disposal. It is stated that the date of hearing is fixed on 10-01-2008.

Taking over all facts and circumstances of the case into consideration, especially the compliance of the conditional order made by this court, this court is of the considered opinion that the writ petitioners are permitted to deposit an additional amount of Rs.1,00,000/- (Rupees one lakh only) in addition to the amount already deposited within a period of six weeks from today. On such condition being complied with, the interim order granted by this court would be operative till the disposal of the appeal S.A.No.68 of 2006 on the file of Debt Recovery Tribunal, Hyderabad.

With the above directions, the writ petition is accordingly disposed of. There shall be no order as to costs.

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18-12-2007

Prv